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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,551	09/30/2003	Edward J. Cavenagh	83378-702 ADB	6470
23529	7590	05/05/2005	EXAMINER	
ADE & COMPANY				PIZIALI, ANDREW T
1700-360 MAIN STREET				ART UNIT
WINNIPEG, MB R3C3Z3				PAPER NUMBER
CANADA				1771

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/673,551	CAVENAGH, EDWARD J.
	<b>Examiner</b>	<b>Art Unit</b>
	Andrew T Piziali	1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 30 September 2003.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 20 and 21 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/2/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-19, drawn to a form for receiving and containing a settable filler material, classified in class 442, subclass 232.
  - II. Claims 20-21, drawn to a method for forming a support column, classified in class 112, subclass 475.01.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case product as claimed can be used in a materially different process of using that product. The product as claimed can be used to form a support column wherein a non-heated settable filler material is poured into the form.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Rejoinder will be considered upon indication of allowable subject matter pursuant to MPEP 821.04.

5. During a telephone conversation with Ryan Dupuis on 3/31/2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 20-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Objections***

6. Claim 5 is objected to because of the following informality: In line 2, it appears that "the strip at an angle" is suppose to read "the strip lies at an angle" (see page 4, lines 15-18 of the specification). Appropriate correction is requested.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear what constitutes "transportation bag grade."

9. Claim 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear how the tubular wall and the end panels can consist of (closed claim language) a single layer of fabric when claim 14 states that the fabric is laminated with a metal foil layer.

***Claim Rejections - 35 USC § 102/103***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1, 3-5 and 8-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5,902,070 to Bradley.

Regarding claims 1, 3-5 and 8-13, Bradley discloses a form for receiving and containing a settable filler material while the material sets comprising: a tubular wall; two circular end panels; the wall and end panels each being formed from a flexible woven polymer fabric; each of the end panels being stitched around its circular peripheral edge to an end edge of the tubular wall; at least one filler opening into the form for receiving the filler material; wherein the tubular wall is formed from a strip of the fabric which is arranged helically such that one side edge of the strip is stitched to an opposed side edge of a next turn of the strip to define a stitched seam which extends helically of the tubular wall from one end panel to the opposite end panel (see entire document including column 3, lines 16-54, column 6, lines 1-10, column 10, lines 14-26 and Figures 5, 6, 10 and 12).

Regarding claim 3, Bradley discloses that the fabric strip may extend in at least one turn of helix (Figure 6).

Regarding claim 4, Bradley discloses that a filler opening(s) may be provided based on the intended application (column 9, lines 5-12). Bradley illustrates a filler opening in an end panel (Figures 11A, 11B, 11C and 12) and filler openings in the tubular wall (Figures 10, 11A, 11B and 11C).

Regarding claim 5, the strip of Bradley appears to lie at an angle of the order of 45 degrees relative to a line transverse to the longitudinal to the axis of the tubular member (see Figures 5-7, 10, 12 and/or 15).

Regarding claim 8, Bradley discloses that the tubular wall and end panels may each consist of a single layer of fabric (column 3, lines 42-54).

Regarding claim 9, Bradley discloses that the tubular wall and the end panels may be stitched together with stitched seams on the outside of the form (column 12, lines 7-29 and Figures 6 and 7).

Regarding claim 10, Bradley discloses that the tubular wall and the end panels may be stitched together with simple overlapping seams (column 3, lines 28-33).

Regarding claim 11, Bradley discloses that the flexible fabric may be polypropylene woven fabric (column 6, lines 1-11).

Regarding claim 12, Bradley discloses that the flexible woven fabric may be substantially imperforate (column 3, lines 20-22).

Regarding claim 13, Bradley does not specifically mention the grade of the bag, but considering that the bag of Bradley is substantially identical to the claimed bag in terms of material and construction, it appears that the bag of Bradley is transportation bag grade.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 2, 14-16 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley as applied to claims 1, 3-5 and 8-13 above, and further in view of USPN 6,171,533 to Adams et al. (hereinafter referred to as Adams).

Regarding claims 2, 14-16 and 18-19, Bradley discloses that the fabric may have an inner liner (column 3, lines 55-62 and column 10, lines 43-56), but Bradley does not specifically mention a metal foil layer in combination with the woven polymer layer. Adams discloses that it is known in the art to use a metal foil layer in combination with a woven polymer layer (column 5, lines 8-13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the wall and end panels from any suitable material, such as a woven polymer fabric laminated with a metal foil, because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability..

Regarding claim 15, Bradley discloses that the fabric strip may extend in at least one turn of helix (Figure 6).

Regarding claim 16, Bradley discloses that a filler opening(s) may be provided based on the intended application (column 9, lines 5-12). Bradley illustrates a filler opening in an end panel (Figures 11A, 11B, 11C and 12) and filler openings in the tubular wall (Figures 10, 11A, 11B and 11C).

Regarding claim 18, Bradley discloses that the tubular wall and end panels may each consist of a single layer of fabric (column 3, lines 42-54).

Regarding claim 19, Bradley discloses that the tubular wall and the end panels may be stitched together with stitched seams on the outside of the form (column 12, lines 7-29 and Figures 6 and 7).

15. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley as applied to claims 1, 3-5 and 8-13 above, and further in view of USPN 5,232,429 to Cizek et al. (hereinafter referred to as Cizek).

Bradley does not mention support straps, but Cizek discloses that it is known in the art to add support straps for handling purposes and/or for securing/fastening of the form during installation and/or use (see entire document including column 2, lines 35-44 and column 10, lines 20-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add support straps in any suitable location based on the intended application and because the support straps can be used for improved handling and/or for securing/fastening of the form during installation and/or use.

16. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,902,070 to Bradley in view of USPN 6,171,533 to Adams as applied to claims 2, 14-16 and 18-19 above, and further in view of USPN 5,232,429 to Cizek.

Bradley does not mention support straps, but Cizek discloses that it is known in the art to add support straps for handling purposes and/or for securing/fastening of the form during installation and/or use (see entire document including column 2, lines 35-44 and column 10, lines 20-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to add support straps in any suitable location based on the intended application and because the support straps can be used for improved handling and/or for securing/fastening of the form during installation and/or use.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew T Piziali whose telephone number is (571) 272-1541. The examiner can normally be reached on Monday-Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

atp

GJ 4/10/05  
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**PATENT EXAMINER**

  
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